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Staff: Ruby Pap
Staff Report: August 26, 2005
Hearing Date: September 15, 2005
Commission Action:

TO: Commissioners and Interested Parties

FROM: Peter M. Douglas, Executive Director
Robert S. Merrill, North Coast District Manager
Ruby Pap, Coastal Planner

SUBJECT: **Mendocino County LCP Amendment No. MEN-MAJ-1-02 PART C (Major), Hanna/Dickson (Meeting of September 15, 2005)**

SYNOPSIS

Amendment Description

Mendocino County LCP Amendment No. MEN-MAJ-1-02 proposed site-specific changes to provisions of the County's certified Local Coastal Program (LCP) affecting four different locations within the coastal zone, Parts A-D. This staff recommendation addresses Part C of the amendment. Commission hearings on Parts A and B of the amendment were held at the February 18, 2005 Commission meeting, and the hearing on Part D was held at the March 17, 2005 Commission meeting. Part C of the changes proposed by Amendment No. MEN-MAJ-1-02 is as follows:

- 1 PART C (GP 11-2001/R 12-2001, HANNA/DICKSON). APN 118-320-02. Change the coastal plan land use classification of a 1.2-acre property located 0.75 mile north of Mendocino, west of County Road #500D (aka Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential- 5 acre minimum (RR-5 [2 acre minimum]) and rezone the site from OS to RR-5 [RR-2].

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Summary of Staff Recommendation

The staff recommends that the Commission, upon completion of a public hearing, **deny Part C (Hanna/Dickson) of the amendment request as submitted and certify the amendment request with suggested modifications.** The amendment would change the coastal plan land use classification of a 1.2-acre property located 0.75 mile north of Mendocino, west of County Road #500D (aka Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential-5 acre minimum (RR-5 [2 acre minimum]) and rezone the site from OS to RR-5 [RR-2] (exhibit no. 3). While the subject 1.2 acres are classified as Open Space and denoted as “DPR” on the Coastal Land Use Map, and were included on a 1974 California Department of Parks and Recreation (DPR) acquisition map, the property has always been privately owned, was never acquired by DPR, and DPR currently has no plans to acquire the property.

The subject site is a bluff top property on a point that faces south towards the Town of Mendocino and Mendocino Headlands State Park. Russian Gulch State Park borders the property on the north side and residential parcels neighbor the property to the southeast. The site contains a small residence on its southeastern side. A large portion of the lot is wooded, with open areas in the middle and the northwestern side.

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor’s Parcel Numbers (APNs). If the unconditional certificates of compliance were sufficient to legalize the three APNs and no coastal development permit is required, these parcels would be considered “legal non-conforming lots” and allowed to be developed in accord with the zoning regulations applicable to the property regardless of the lot size. In general, a parcel qualifies for issuance of an unconditional Certificate of Compliance if the real property in question complies with the provisions of the Subdivision Map Act and County or City Ordinances enacted pursuant thereto. Based on an apparent inconsistency with section 17-102 of Title 17 of Article XV of the Mendocino County Zoning Code, a section specifically addressing the process to legalize lots prior to 1972, Commission staff sent a letter to Mendocino County in May of 2005 in an effort to determine the County’s legal basis for issuing unconditional COCs, rather than conditional COCs, which would have required the issuance of a coastal development permit to legalize the lots which would have been appealable to the Commission. To date, no response from the County has been received. The validity of the COCs affects the maximum potentially allowable density of residential development on the site and the corresponding cumulative impact of such residential buildout on coastal resources and services.

Although the issue regarding the need for conditional certificates of compliance and a coastal development, rather than unconditional certificates of compliance without a coastal development permit, has not yet been resolved, staff still recommends that the Commission proceed on the subject LCPA. Staff recommends that the Commission proceed on the subject LCPA because whether or not it is ultimately determined that conditional certificates of compliance and a coastal development permit are required to legalize the three APNs, staff is still able to recommend approval of the LCPA with suggested modifications.

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Staff recommends approval of the subject LCPA with suggested modifications whether the subject property consists of only one legal lot or three legal lots because as modified to require that any future proposed development demonstrate proof of adequate water supply and adequate septic and leachfield capacity prior to approval of a coastal development permit for any future proposed development on the subject property, the proposed amendment is consistent with the Coastal Act because: (1) the amendment request would not increase the density at the site; (2) the traffic impacts to Highway 1 would still be insignificant; and (3) a backdrop of trees and the existing residential development along the point would still help to blend the development into its surroundings and protect scenic views of the bluff from the headlands, in a manner subordinate to the character of its setting.

More specifically, the subject property is currently developed with one house. If the unconditional COCs are not valid, and if the Commission were to approve the amendment request to change the land use designation and zoning from OS to RR-5 (RR-2), the amendment request would not increase the density on the site. Since the subject property is smaller than four acres, the property is too small to subdivide (it is 1.2 acres, and the rural residential designation would have a minimum lot size of two acres). A change from OS to RR-5 (RR-2) would thus not allow another parcel to be created that could support an additional house.

Whether or not the property is designated OS or RR-5 (RR-2), in order for the County to correctly process legal coastal development permits for any new residence on these APNs, it will become necessary for them to have adequate documentation as to the legal parcel configuration of the subject property, consistent with the requirements of the Subdivision Map Act, the Coastal Act and the certified LCP. Therefore, staff recommends that the Commission impose Suggested Modification No. 1, shown below, which would add Policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP, and requires that before new development is approved on the subject property, the County and the applicant must substantiate that conditional certificates of compliance and a coastal development permit are not necessary to legalize APNs 118-32-10, 118-32-11 and 118-32-12.

In addition, Coastal Act Section 30250 requires that new development be located in or near existing developed areas able to accommodate it and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The County has submitted preliminary information to substantiate capacity for sewage disposal on site to support two new residences, but no information has been submitted as part of this application to show that this system could support a third residence, if developed, which would be the ultimate development potential on the subject property if conditional certificates of compliance and a coastal development permit were not necessary to legalize APNs 118-32-10, 118-32-11 and 118-32-12. Further, the County did not submit a specific proof of water test to support three residences as part of this application, and there is some evidence to suggest that there may not be adequate water available on the site to support the residential development, including the fact that the existing well ran dry. Therefore, staff recommends that the Commission impose Suggested Modification No. 1, which would include in the new Policy 4.7-4 described above and shown below, a reiteration that adequate water supply and adequate septic and leachfield capacity must

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be determined prior to approval of a coastal development permit for any future proposed development on the subject property as required by the LCP and consistent with Coastal Act 30250.

Suggested Modification No. 1:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (aka Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that: (1) conditional certificates of compliance and a coastal development permit are not necessary to legalize APNs 118-32-10, 118-32-11 and 118-32-12, including, but not limited to, consideration of the consistency of the subject APNs with Section 17-101 of Title 17 Article XV of the Mendocino County Zoning Code; and (2) APNs 118-32-10, 118-32-11 and 118-32-12 have adequate water supply and septic capacity to support the proposed development.

As modified, the proposed LUP amendment will have no adverse impacts on coastal resources and is consistent with the Coastal Act. In addition, as modified, the proposed zoning district allows for the same range of principally permitted and conditional uses as the proposed LUP designation as modified. Therefore, the proposed Implementation Plan amendment will conform with and adequately carry out the LUP as proposed to be amended.

Analysis Criteria

To approve the amendment to the Land Use Plan (LUP), the Commission must find that the LUP, as amended, will remain consistent with the Chapter 3 policies of the Coastal Act. To approve the amendments to the zoning ordinance, the Commission must find that the Implementation Plan (IP), as amended, will conform with and is adequate to carry out the LUP.

Additional Information:

For further information, please contact Ruby Pap at the North Central Coast District Office (415) 904-5260. Correspondence should be sent to the North Coast District Office at the above address.

MOTIONS, STAFF RECOMMENDATIONS, RESOLUTIONS AND SUGGESTED MODIFICATIONS

I. MOTIONS, STAFF RECOMMENDATIONS, AND RESOLUTIONS FOR LCP AMENDMENT NO. MEN-MAJ-1-02 Part C

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**A. DENIAL OF LUP AMENDMENT NO. MEN-MAJ-1-02 PART C AS
SUBMITTED:**

MOTION I: *I move that the Commission Certify Land Use Plan Amendment No.
MEN-MAJ-1-02 Part C as submitted by the County of Mendocino.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only by an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION I TO DENY CERTIFICATION OF LUP AMENDMENT NO.
MEN-MAJ-1-02 PART C AS SUBMITTED:**

The Commission hereby denies Land Use Plan Amendment No. MEN-MAJ-1-02 Part C as submitted by the County of Mendocino and adopts the findings set forth below on the grounds that the amendment does not conform to the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures, which could substantially lessen any significant adverse impact, which the land use plan amendment may have on the environment.

**B. CERTIFICATION OF LUP AMENDMENT NO. MEN-MAJ-1-02 PART C WITH
SUGGESTED MODIFICATIONS:**

MOTION II: *I move that the Commission certify Land Use Plan Amendment No.
MEN-MAJ-1-02 Part C for the County of Mendocino if it is modified as
suggested in this staff report.*

**STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED
MODIFICATIONS:**

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION II TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Land Use Plan Amendment No. MEN-MAJ-1-02 Part C for the County of Mendocino if modified as suggested and adopts the findings set forth below on the grounds that the land use plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the

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Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the land use plan amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the land use plan amendment may have on the environment.

C. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT NO. MEN-MAJ-1-02 PART C (HANNA/DICKSON), AS SUBMITTED:

MOTION III: *I move that the Commission reject Implementation Program Amendment No. MEN-MAJ-1-02 PART C for the County of Mendocino as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION III:

The Commission hereby certifies Implementation Program Amendment No. MEN-MAJ-1-02 PART C for the County of Mendocino as submitted and adopts the findings set forth below on grounds that the Implementation Program will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

II. SUGGESTED MODIFICATIONS

Suggested Modification No. 1:

Add new policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP as follows:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development

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proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (aka Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that: (1) conditional certificates of compliance and a coastal development permit are not necessary to legalize APNs 118-32-10, 118-32-11, 118-32-12, including, but not limited to, consideration of the consistency of the subject APNs with Section 17-101 of Title 17 Article XV of the Mendocino County Zoning Code; and (2) APNs 118-32-10, 118-32-11, 118-32-12 have adequate water supply and septic capacity to support the proposed development.

III. DESCRIPTION OF SITE AND LCP AMENDMENT

Part C (GP 11-2001/R 12-2001, Hanna/Dickson)

The proposal for Part C would change the Coastal Land Use Plan classification of a 1.2-acre parcel located 0.75 mile North of Mendocino, West of County Road #500D (aka. Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential- 5 acre minimum (2-acre minimum) (RR-5 [RR-2]) and rezone the site from OS to RR-5 [RR-2]). Lands to the north, also classified as OS-DPR, are within Russian Gulch State Park. While the subject 1.2 acres are classified as Open Space and denoted as “DPR” on the Coastal Land Use Map, and the State Department of Parks and Recreation’s staff indicated to County staff that the subject parcel was included on a 1974 State Park acquisition map, it was never acquired by the State Department of Parks and Recreation (DPR), and according to the County, DPR currently has no plans to acquire the property.

The subject site is a bluff top property on a point that faces south towards the Town of Mendocino and Mendocino Headlands State Park. Russian Gulch State Park borders the property on the north side and residential parcels neighbor the property to the southeast. The property is currently developed with a residence on its southeastern side, and this existing residence could be re-modeled and upgraded under the current OS designation because it is a legal non-conforming use. A large portion of the lot is wooded, with open areas in the middle and the northwestern side. The site is within a designated highly scenic area. No known environmentally sensitive habitat exists on the subject property.

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor’s Parcel Numbers (APNs). The original APN for the property, 118-320-02, has been retired, and three new APNs have been issued. The southern APN 118-320-11 is currently developed with a single family dwelling, while the other APNs 118-320-10 and 118-320-12 are undeveloped. The County Assessor’s Office records show the total property area to be 1.2 acres. The sizes of the three APNs are as follows: 118-320-10 = 0.6 acre, 118-320-11 = 0.4 acre, and 118-320-12 = 0.2 acre. The applicant contends in a letter to the County that, according to a recent survey, the combined acreage of the three parcels is approximately 3.031 acres, however the County Assessor’s office has not confirmed nor recorded this acreage. The owners have also indicated their desire to merge and resubdivide the

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three APNs into two legal lots and allowing for the construction of a total of two houses on the property.

The site is currently designated as a “critical water resources zone” according to the County’s groundwater study. The proposed RR-5 (RR-2) designation would allow one residence to be developed per 5-acre parcel, or per 2-acre parcel if ground water tests prove that there is adequate water supply to support this density. Given that the three APNs do not total four or more acres, none of the APNs could be subdivided under the proposed RR-5 [RR-2]) classification, and the proposed RR-5 [RR-2] designations are consistent with the RR-5 [RR-2] designations on the private property to the south.

If the unconditional COCs are legally valid, the three APNs would be considered “legal non-conforming lots” and be allowed to be developed in accord with the zoning regulations on the property regardless of the lot size. In this case, if the land use designation and zoning were converted from OS to RR-5 (RR-2) as proposed, the property could theoretically be developed with three residences with coastal development permits, one each on the three APNs. If the unconditional COCs are valid and the three legal non-conforming lots instead remain designated as Open Space, according to Mendocino coastal zoning code, the property owner could theoretically develop, with a coastal development use permit, three open space employee caretaker housing units, one each on the three APNs recognized by the COCs. This request is unlikely to be approved at the coastal development permit stage, however, because no park exists on the subject property, and therefore there is no need for an employee caretaker to live on the property. Section 20.316.030 of the Mendocino County Coastal Zoning Code defines employee caretaker housing as:

One (1) single-family dwelling or a single trailer coach may be permitted by conditional use permit on a lot or building site when Open Space or Visitor Accommodations and Services or Industrial use is existing on the premises or a permit has been issued for the Open Space or Visitor Accommodations and Services or Industrial use when occupied exclusively by a caretaker or manager or superintendent of such Open Space or Visitor Accommodations and Services or Industrial use and his/her family.

In addition, if left designated as open space, the three APNs legalized by three valid certificates of compliance could theoretically be developed with coastal civic use types (on-site alternative energy facilities, community recreation, minor impact utilities), coastal commercial use types (commercial recreation: outdoor sports and recreation), coastal visitor accommodations and services use types (campground, hostel, organized camp, recreational vehicle campground), or coastal agricultural use types (limited forest production and processing, row and field crops, and tree crops). However, it is not known if any of these civic, commercial, visitor accommodating services, and agricultural use types would be economically viable for the subject property.

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IV. LAND USE PLAN FINDINGS

A. Standard of Review

To approve the amendments to the LUP, the Commission must find that the LUP, as amended, will remain consistent with the Chapter 3 policies of the Coastal Act.

B. Certificates of Compliance (COCs)

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor's Parcel Numbers (APNs). In general, a parcel qualifies for issuance of an unconditional Certificate of Compliance if the real property in question complies with the provisions of the Subdivision Map Act and County or City Ordinances enacted pursuant thereto. Commission staff has been corresponding with Mendocino County in an effort to determine the County's legal basis for issuing three unconditional COCs for the property, rather than conditional COCs, which would have required the issuance of coastal development permits to establish the lots that would have been appealable to the Commission. The validity of the unconditional COCs affects the maximum potentially allowable density of residential development on the site and the corresponding cumulative impact of such residential buildout on coastal resources and services. If the three unconditional certificates of compliance the County issued were sufficient to legalize the three APNs and no CDP is required, under the proposed LUP and zoning change to RR-5 [RR-2], these parcels would be "legal non-conforming lots" and allowed to be developed in accord with the zoning regulations on the property regardless of their deficient lot size.

In many respects, the three unconditional COCs appear to meet applicable standards governing the issuance of COCs, including provisions of State law and the County's zoning ordinance (some of the applicable zoning code provisions are not part of the County's certified LCP). County Staff informed Commission staff that the parcels were conveyed by separate documents prior to March 4, 1972 as part of a division creating fewer than five parcels, they complied with the Subdivision Map Act at the time of their creation, they are not subject to merger, and the owner did not voluntarily combine them. However, questions remain regarding how the issued unconditional COCs conform with Sections 17-101 and 17-102 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code.

Section 17-102 of Title 17 Article XV of the Mendocino County Zoning Code states that a Certificate of Compliance will be issued if the parcels in question meet the standards set forth in Section 17-101. Among other things, these standards require that for areas where neither water or sewage disposal services are provided by a publicly controlled political entity, the minimum lot size shall be 40,000 square feet, *regardless of the minimum lot size requirements of the zoning ordinances applicable at the time a lot was created.*

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Sec. 17-101 Standards.

For the sole purpose of determining compliance with this Chapter, County zoning ordinances and the Map Act, any lot meeting the requirements set forth in this section shall be deemed a legally conforming lot for which development permits may be issued.

*(A) **Legal Status.** Each such lot must have been created by deed or contract of sale, in either case fully executed prior to March 4, 1972 and recorded not later than November 29, 1977. In lieu of such recordation, proof may be submitted to the satisfaction of the Planning Division that such deed or contract of sale was indeed executed prior to March 4, 1972.*

*(B) **Lot Size.** Regardless of the minimum lot size requirements of the zoning ordinances applicable at the time a lot was created or on the effective date of this ordinance, each such lot must conform to the following minimum lot size requirements:*

(1) Where both water and sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or district: six thousand (6,000) square feet.

(2) Where either water or sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or a district: twelve thousand (12,000) square feet.

(3) Where neither water or sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or a district: forty thousand (40,000) square feet. [Emphasis added.]

In the Hanna/Dickson case, the lot sizes are: 0.60 acre for APN 118-320-10, 0.40-acre for 118-320-11, and 0.20 acre for 118-320-12. None of these would appear to comply with the minimum lot size provision of 40,000 square feet for areas where neither water or sewage disposal services are provided by a publicly controlled political entity (Section 17-101(b)(3)).

County staff informed verbally Commission staff that all parcels not subject to merger and transferred prior to March 4, 1972 can be recognized, and that this fact overrides the above referenced ordinances. However, given the express provisions of Section 17-101 which require lots to be a minimum of 40,000 sq. ft. regardless of the minimum lot size requirements of the zoning ordinances applicable at the time a lot was created, the County's basis for overcoming the apparent inconsistency of the subject parcels with the minimum parcel size requirements of Section 17-101(b)(3) is unclear. In addition, the County staff did not identify a provision in the County's zoning code or State law in support of their rationale.

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On May 5, 2005 Commission staff mailed a letter to the Mendocino County Coastal Permit Administrator outlining the above questions (exhibit no. 5). To date Commission staff has not received a response. As explained above, answers to these questions would assist in a determination of the legality of the three COCs, and in turn provide a picture of the overall development potential on the subject property, i.e. whether there are actually one, two, or three legal lots. However, the subject property currently is developed with one house. Even if the unconditional COCs are not valid, and the Commission approves the approved amendment request to change the land use designation and zoning from OS to RR-5 (RR-2), the amendment request would not increase the density on the site. Since the subject property is smaller than four acres, the property is too small to subdivide (it is 1.2 acres, and the rural residential designation would have a minimum lot size of two acres). A change from OS to RR-5 (RR-2) would thus not allow another parcel to be created that could support an additional house.

Whether or not the property is designated OS or RR-5 (RR-2), in order for the County to correctly process legal coastal development permits for any new residence on these APNs, it will become necessary for them to have adequate documentation as to the legal parcel configuration of the subject property consistent with the requirements of the Subdivision Map Act, the Coastal Act and the certified LCP. Therefore, the Commission imposes Suggested Modification No. 1, which adds policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP, and requires that before new development is approved on the subject property, the County must substantiate that conditional certificates of compliance and a CDP are not necessary to legalize the three APNs, including but not limited to a determination regarding the consistency of the subject APNs with Section 17-101 of Title 17 Article XV of the Mendocino County Zoning Code, as follows:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (aka Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that: (1) conditional certificates of compliance and a coastal development permit are not necessary to legalize APNs 118-32-10, 118-32-11, 118-32-12, including, but not limited to, consideration of the consistency of the subject APNs with Section 17-101 of Title 17 Article XV of the Mendocino County Zoning Code; and (2) APNs 118-32-10, 118-32-11, 118-32-12 have adequate water supply and septic capacity to support the proposed development.

The Commission finds that the Commission’s certification with suggested modifications of Mendocino County LCP Amendment No. 1-02 Part C (Hannah/Dickson) shall not be construed as indicating that the Commission recognizes the COCs issued for the subject property by the County as being legally valid.

C. New Development

Section 30250(a) of the Coastal Act requires that new development be located in or near existing developed areas able to accommodate it and where it will not have significant adverse effects,

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either individually or cumulatively, on coastal resources. The intent of this policy is to concentrate development to minimize adverse impacts on coastal resources.

Regarding Part C (Hanna/Dickson), the 1.2-acre property currently has one residence, one onsite well, and one septic system. If it is ultimately established that unconditional certificates of compliance were sufficient to legalize the three APNs, the proposed amendment would allow for a total of up to three residences on these APNs, although the applicant has indicated his desire to merge the three APNs into two, and to develop two residences. As noted above, the subject property currently is developed with one house. Even if the unconditional COCs are not valid, if the Commission were to approve the approved amendment request to change the land use designation and zoning from OS to RR-5 (RR-2), the amendment request would not increase the density on the site. Since the subject property is smaller than four acres, the property is too small to subdivide (it is 1.2 acres, and the rural residential designation would have a minimum lot size of two acres), and a change from OS to RR-5 (RR-2) would not allow another parcel to be created that could support an additional house.

The County has submitted preliminary information to substantiate capacity for sewage disposal on site to support two new residences. According to soil surveys and ground water monitoring, there is sufficient leachfield area and capacity on the property to support two three-bedroom houses. While the soils on the property have been shown to be adequate to support some sort of leachfield system, no information has been submitted as part of this application to show that this system could support a third residence, which could potentially be allowable if it is ultimately established that unconditional certificates of compliance were sufficient to legalize the three APNs.

The County did not submit a specific proof of water test as part of this application. Written correspondence from property owners to the County indicates that the existing well was supplemented by a new well, which was tested at 0.9 gallons per minute. In critical water resource areas, such as the subject property, the County Environmental Health Division requires that wells provide one gallon per minute of water per residence. This requirement can be reduced to ½ gallon per minute if supplemented with water storage system of 2,500 gallons. Based on this information, it appears that 0.9 gallons per minute of water would not provide enough water to support three homes, which is the ultimate development potential on the property if the issued COCs are legally valid. Moreover, 0.9 gallons per minute would not support two homes, which is what the applicant has indicated he intends to construct on the property. Further, there is other evidence to suggest that there may not be sufficient water to support the intended future residential development on the site. In November 2001 Mendocino County issued a Coastal Emergency Permit (#EM 04-01) and a follow – up coastal development permit (CDP# 04-02) to drill the supplemental well on the property. According to the staff report for CDP #04-02, the parcel had been served by an existing well (which had been hand dug), but it had “run dry,” and it was necessary to drill the new well to rectify the water problem. While the staff report for CDP# 04-02 stated that there is an on-site water source and the well would not adversely affect groundwater resources, it is not clear whether there is sufficient water on site to support three residences on the property. No additional information has been provided

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to the Commission to prove that there is sufficient water to support future residential development on the site.

Any future residential development on the property would require coastal development permits from Mendocino County, and these permits would be appealable to the Commission because the site is located between the first public road and the sea, it is located in a significant coastal resource area (it is designated “highly scenic” in the LCP), and it is located within 300 feet of a coastal bluff. Current Mendocino County LCP policies require that all development be shown to be adequately served by utilities prior to approval of the coastal development permit, including water and septic. However, County practice has been to require such demonstration of water and septic as a condition of approval of the CDP before issuance of the building permit, rather than as a required finding before approval of the CDP. This current practice does not provide assurance that future residential development on the site, facilitated by the proposed amendment, would be assessed for adequate water supply or septic capacity before approval of the CDP.

For all of the above reasons, the Commission cannot find that the future residential development potential (maximum of three residences if the unconditional COCs are legally adequate) on the site would be adequately accommodated with water or septic service, or that it would not have significant adverse effects on coastal resources. Therefore, the Commission finds that the proposed LUP amendment is inconsistent with Section 30250 of the Coastal Act and must be denied. However, if modified to ensure that future proposed development was thoroughly assessed to ensure that it is adequately accommodated with water and septic services, and that any proposed development will not have a significant impact on coastal resources, and that the appropriate findings are made prior to CDP approval, the amendment would be consistent with Coastal Act Section 30250. Therefore, the Commission imposes Suggested Modification No.1, which in addition to requiring that the legality of the three COCs be assessed, reiterates that any future proposed development on the subject property must be required to show proof of adequate water supply and adequate septic and leachfield capacity prior to approval of the coastal development permit, as required by the LCP and consistent with Coastal Act 30250.

Therefore, the Commission finds that proposed LUP amendment Part C as modified is consistent with Coastal Act Section 30250.

D. Highway One Traffic Capacity.

Coastal Act Section 30254 states that it is the intent of the Legislature that State Highway One in rural areas of the coastal zone remain a scenic two-lane road, and that where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. Section 30250(a) of the Coastal Act also requires that new development not have significant adverse effects, either individually or cumulatively, on coastal resources.

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Because the only north-south arterial in coastal Mendocino County is Highway One, the requirements of Section 30254 are a limiting factor on the potential for new development in Mendocino County. In addition, Section 30254 requires that high priority uses of the coast not be precluded by other, lower-priority uses when highway capacity is limited.

Highway capacity has been recognized by the Commission as a constraint that limits new development, as new development generates more traffic that uses more capacity and a lack of available capacity results in over-crowded highways for long periods of time. When it eventually certified the Mendocino County Land Use Plan with Suggested Modifications, the Commission found that too much buildout of the Mendocino coast would severely impact the recreational experience of Highway One and its availability for access to other recreational destination points. The Commission reduced by more than half the number of potential new parcels that could be created under the certified LUP, based on its conclusion that, given the information available at that time, approximately 1,500 new parcels was the maximum number of new parcels Highway One could accommodate while remaining a scenic, two-lane road.

The Commission recognized that in the future, a greater or smaller number of potential new parcels might be more appropriate, given that changes might occur that would affect highway capacity, such as new road improvements, or that development might proceed at a faster or slower pace than anticipated. To provide for an orderly process to adjust the number of potential parcels allowed under the LCP to reflect conditions as they change over time, the Commission approved Policy 3.9-4 of the LUP that required a future review of the Land Use Plan.

Policy 3.9-4 of the County's LUP states that:

Following approval of each 500 additional housing units in the coastal zone, or every 5 years, whichever comes first, the Land Use Plan shall be thoroughly reviewed to determine:

Whether the Highway 1 capacity used by non-resident travel and visitor accommodations is in scale with demand or should be increased or decreased.

Whether the plan assumptions about the percentage of possible development likely to occur are consistent with experience and whether the allowable buildup limits should be increased or decreased.

Whether any significant adverse cumulative effects on coastal resources are apparent.

In response to this policy, in 1994 the County hired a transportation consultant firm to do a study (titled the State Route 1 Corridor Study) that would determine the impact to Highway One traffic carrying capacity from the buildout of the Coastal Element of the General Plan. The study projected future traffic volumes which would be generated by potential development allowed by the Coastal Element in the coastal zone and by potential development from growth areas outside of the coastal zone that affect traffic conditions on Highway One. The County also has initiated

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additional studies to determine where appropriate density increases could be allowed without overtaxing Highway One's limited capacity.

The Commission has adopted findings in its actions on previous LCP amendments stating that proposed LCP changes that would result in increases in residential density on a first-come, first-served basis would not ensure that highway capacity would be reserved for higher priority coastal land uses. When looked at in isolation, it may not appear that approving any particular proposal for a density increase would have much impact, when the potential for only a few new parcels is created by each such proposal. However, consistent with Section 30250(a) of the Coastal Act, the cumulative impact of numerous LCP Amendments allowing increases in residential density on highway capacity and other coastal resources must also be addressed. Looking at each new project in isolation fails to take into account the effect numerous projects would have if approved in this fashion.

During its review of Mendocino LCP Amendment No. 1-98(Major) during the Commission meeting of September 9, 1998, the Commission expressed concern regarding the approval of any future density-increasing LCP amendments without having the benefit of the complete review called for by LUP policy 3.4-9. Although a comprehensive review of the Land Use Plan has not yet been completed, the County is progressing toward the development of such a study specified by LUP policy 3.4-9.

Part C (Hanna/Dickson) of the proposed amendment would result in potential new residential development, as allowed by the RR-5 [RR-2] designation. The three County-recorded unconditional COCs on the property, if legally adequate, could potentially allow for the residential development of three APNs, an increase of two residences in addition to the one that currently exists on the site. However, as stated above even if the Commission were to approve the approved amendment request to change the land use designation and zoning from OS to RR-5 [RR-2], the amendment request would not increase the density on the site. Since the subject property is too small to subdivide (it is 1.2 acres, and the rural residential designation would have a minimum lot size of two acres), a change from OS to RR-5 [RR-2] would not allow another parcel to be created that could support an additional house.

Mendocino County staff submitted a Highway One capacity analysis based on having one additional residence on the subject property (for a total of two), stating: "The State Route 1 Corridor Study indicates road segment 13 (Lansing St. to Gibney Lane) is currently and will remain at an acceptable level of service 'E' (LOS E) through the year 2020 under the 75/50 development scenario, with reserve capacity of 260 to 500 peak hour trips (pht) northbound/southbound. A cumulative analysis of traffic impacts to State Route 1 resulting from approved Coastal Plan amendments along road segment 13 finds no increase in pht. Increased traffic resulting from approved Coastal Plan amendments along the total corridor is estimated at 94.22 pht; one additional residence (which is indicated as supportable) adding 0.78 pht brings the total to 95 pht, below the 100-trip threshold at which a new traffic study is required." While this analysis does not address the traffic potential of having a total of three residences, as the recorded COCs would allow (if legally adequate), the applicant has indicated his desire to merge the three APNs into two, and to develop a total of two residences (including the existing

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residence), which would not have any adverse impacts to Highway 1 traffic capacity according to the analysis above. If the applicant were to develop three residences, an additional 0.78 peak hour trips would still be below the 100-trip threshold at which a new traffic study would be required, and traffic would remain at an acceptable level of service 'E'.

Based on the facts that: (a) the amendment request by itself would not increase the density at the site, and (b) if the recorded COCs allowed the future development of three residences, the traffic impacts to Highway 1 would still be insignificant, the Commission finds that the proposed amendment for Part C (Hanna/Dickson) would have no adverse effect on Highway One traffic capacity and is consistent with Coastal Act Sections 30254 and 30250(a).

E. Visual Resources

Coastal Act Section 30251 states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting. Section 30250 requires that development be sited and designed to avoid individual and cumulative impacts on coastal resources.

In the case of Part C (Hanna/Dickson), the property is located in a designated "Highly Scenic Area," which means future development must be subordinate to the character of its setting. Commission staff conducted a site view of the property and observed that the area is heavily wooded, with many trees lining the eastern border of the property, some trees on the bluff side, and others scattered throughout the site. In addition, several homes to the southeast of the subject property are visible through the trees and are part of the visual character of the setting. Upon viewing the property from Headlands State Park in Mendocino, Commission staff visually confirmed that any future residential development which would be allowable, consistent with the certified LCP as amended, would be set against a backdrop of trees and the existing residential development along the point, which would help to blend the development into its surroundings and protect scenic views of the bluff from the headlands, in a manner subordinate to the character of its setting. Further, from the vantage point of Old Highway One to the east of the property, the trees lining the road do not afford significant views of the ocean, and would also help shield future residential development from the passerby. Moreover, any future development on the site would require a coastal development permit, which would require that the proposed project comply with all applicable policies of the certified LCP, including visual resource policies. Any proposed future residence would be analyzed in detail to ensure that its location or design does not block views to the ocean and is subordinate to the character of its setting. Therefore, the Commission finds that the proposed LUP Amendment for Part C (Hanna/Dickson) is consistent with Coastal Act Sections 30250 and 30251 with respect to the protection of visual resources.

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V. IMPLEMENTATION PROGRAM FINDINGS:

Part C (Hanna/Dickson) of the proposed amendment would rezone the site from OS to RR-5 [RR-2]. The proposed zoning district allows for the same range of principally permitted and conditional uses as the LUP designations that apply to the property as amended. Therefore, since the Commission has certified the proposed LUP map changes with suggested modifications to the LUP policies, the proposed Implementation Program changes can be approved, since to do so would result in an Implementation Program that would conform with and adequately carry out the amended Land Use Plan designations for each site. Thus, the Commission finds that the proposed Amendment No. 1-02 to the Implementation Plan conforms to and is adequate to carry out the Land Use Plan, as amended with suggested modifications by Mendocino County LCP Amendment No. 1-02.

VI. CEQA:

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(A) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

As discussed in the findings above, Part C of the amendment request as modified is consistent with the California Coastal Act and will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

Exhibits:

1. Part C Regional Location Map
2. Part C Vicinity Map
3. County Resolutions
4. Assessor's Map Depicting Certificates of Compliance
5. November 2005 Letter to County Coastal Permit Administrator Regarding COCs